Phoenix Transit System *and* Amalgamated Transit Union, Local Union No. 1433, AFL–CIO. Case 28–CA–15177

May 10, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

On April 27, 2001, Administrative Law Judge Frederick C. Herzog issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[1]

Specifically, we affirm the judge's finding that the Respondent violated Section 8(a)(1) of the Act by maintaining a confidentiality rule prohibiting employees from discussing their sexual harassment complaints among themselves. As found by the judge, employees have a protected right to do so, and Respondent's confidentiality rule clearly restricted the exercise of that right. Further, in agreement with the judge, we find that the Respondent has failed to establish a legitimate and substantial justification for its rule.[2]

Although the rule was originally promulgated during the Respondent's investigation of a July 1996 complaint of alleged sexual harassment by a supervisor, the Respondent's investigation ended within 2 weeks of the filing of that complaint, well before the events at issue in this case. Moreover, as noted by the judge, the rule prohibited discussion even among the affected employees whom Respondent initially assembled at a meeting to solicit information concerning the complaint. In these circumstances, we agree with the judge that the Respondent has failed to provide a sufficient justification for maintaining its rule, and that it was therefore unlawful. Cf. *Caesar's Palace*, 336 NLRB No. 19 (2001) (employer did not violate Section 8(a)(1) by maintaining and enforcing confidentiality rule during ongoing investigation of alleged illegal drug activity, where confidentiality directive was given to each employee who was separately interviewed, the investigation involved allegations of a management cover-up and possible management retaliation, as well as threats of violence, and the confidentiality rule was intended to ensure that witnesses were not put in danger, evidence was not destroyed, and testimony was not fabricated).

We also affirm the judge's finding that the Respondent further violated Section 8(a)(1) by enforcing its confidentiality rule in discharging employee, union officer, and newsletter editor, Charles Weigand, in April 1998. However, contrary to the judge, we do not rely on *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir.1981), cert. denied 455 U.S. 989 (1982). The *Wright Line* analysis is appropriately used in cases that turn on the employer's motive. Here, however, it is undisputed that the Respondent discharged Weigand because of the articles he wrote in the union newsletter concerning the Respondent's handling of employee sexual harassment complaints. The judge found and we agree that Weigand's articles constituted protected concerted activity. Thus, the only issue is whether Weigand's conduct lost the protection of the Act because, as asserted by the Respondent, his articles disclosed confidential information or otherwise crossed over the line separating protected and unprotected activity. See *Felix Industries*, 331 NLRB 144 (2000), remanded 251 F.3d 1051 (D.C. Cir. 2001); *NLRB v. Thor Power Tool Co*., 351 F.2d 584, 587 (7th Cir. 1965), enfg. 148 NLRB 1379 (1964); and *Mast Advertising & Publishing*, 304 NLRB 819 (1991). We agree with the judge, for the reasons he states, that Weigand's conduct did not lose the protection of the Act. Accordingly, we agree that his discharge violated Section 8(a)(1).[3]

Finally, we also adopt the judge's refusal to defer to the arbitrator's award concerning Weigand's discipline and discharge.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the

[1] We shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container*, 325 NLRB 17 (1997). We shall also modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.*, 335 NLRB 142 (2001), and we shall substitute a new notice in accordance with our recent decision in *Ishikawa Gasket American, Inc.*, 337 NLRB 175 (2001).

[2] Chairman Hurtgen does not pass on whether an employer can have a rule under which employees speak with confidentiality *to their employer* in the course of an investigation into alleged sexual harassment. However, the rule here forbids employees from speaking among themselves or to third parties about such complaints. In this respect, the rule is overly broad.

[3] In light of our finding that the Weigand's discharge violated Sec. 8(a)(1), we find it unnecessary to decide whether it also violated Sec. 8(a)(3). See *Mast Advertising*, 304 NLRB at 820 fn. 7, and cases cited there.

Respondent, Phoenix Transit System, Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining or enforcing a rule which prohibits employees from discussing among themselves their sexual harassment complaints.

(b) Discharging or otherwise disciplining employees because they discussed among themselves their sexual harassment complaints, including writing articles in the union newsletter discussing Respondent's handling of employee sexual harassment complaints.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Charles Weigand reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Charles Weigand whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge and within 3 days thereafter notify Charles Weigand in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Phoenix, Arizona, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to Employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain or enforce a rule against employees that prohibits them from discussing among themselves their sexual harassment complaints.

WE WILL NOT discharge or otherwise discipline employees because they have discussed among themselves their sexual harassment complaints, including writing articles in the union newsletter discussing our handling of employee sexual harassment complaints.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Charles Weigand immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL make Charles Weigand whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order remove from our files any reference to his unlawful discharge, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

PHOENIX TRANSIT SYSTEM

Liza Johnson and *John Giannopoulos, Attys.*, for the General Counsel.

Thomas J. Kennedy, Atty. (Sherman & Howard), of Phoenix, Arizona, for the Respondent.

Fran Mullenix, Atty., of Phoenix, Arizona, for the Charging Party.

DECISION

STATEMENT OF THE CASE

FREDERICK C. HERZOG, Administrative Law Judge. This case was heard by me in Phoenix, Arizona, on September 13, 2000, and is based on a charge (later amended), filed by Amalgamated Transit Union, Local Union No. 1433 (Union), on May 8, 1998, alleging generally that Phoenix Transit System (Respondent), committed certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (Act). On March 31, 2000, the Regional Director for Region 28 of the National Labor Relations Board (Board), issued a complaint and notice of hearing alleging violations of Section 8(a)(1) and (3) of the Act. Respondent thereafter filed a timely answer to the allegations contained within the complaint, denying all wrongdoing.

All parties appeared at the hearing, and were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and file briefs. Based upon the record, my consideration of the briefs filed by counsel for the General Counsel and counsel for Respondent, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that Respondent is an Arizona corporation, with an office and place of business in Phoenix, Arizona, where at all times material herein it has been engaged in the business of intrastate transportation of passengers in and around the Phoenix, Arizona metropolitan area; that during the 12–month period ending March 31, 2000, in the course and conduct of its business operations, it derived gross revenues in excess of $250,000, and purchased and received at its facility mentioned above products, goods, and materials valued in excess of $50,000 directly from points outside the State of Arizona.

Accordingly, I conclude that Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Union has had a collective-bargaining relationship with Respondent since approximately 1948. Their most recent agreement had a term from July 1, 1995 until June 30, 2000. It contained a standard grievance-arbitration provision.

For some time the Union has published a monthly newsletter. It is called the "Sun Traveler." Its distribution is limited to the approximately 500 bus drivers (operators) employed by Respondent.

Charles W. Weigand served as an employee of Respondent until April 1, 1998, when Respondent fired him. Before that time, he was one of the bus drivers (operators) employed by Respondent. He also served as the Union's financial secretary, and (most relevant here), as the editor of the "*Sun Traveler*."

On April 1, 1998, Respondent discharged employee Charles W. Weigand. Respondent's stated reason for doing so was that Weigand wrote and published articles in the "Sun Traveler" which Respondent regarded as a "verbal assault" on a supervisor, and which Respondent claimed were "inflammatory" and "extremely derogatory and disparaging." Respondent's letter of discharge to Weigand went on to assert that Weigand's publications contained "public disclosure of private facts" and that Weigand's actions constituted "character defamation."

Testimony by Greathouse (Respondent's Personnel Services Manager), and Ross (Respondent's General Manager), conceded that there was nothing in the articles written by Weigand, which specifically constituted an "assault" upon the supervisor in question. Yet, they contended that Weigand's articles, taken as a whole, amounted to "assault" as defined in the operator's handbook, at section 2.12.3. Ross explained that an "assault" (which is not defined in the handbook), is "an action that is taken to injure a supervisor either physically or reputation [sic], in some way to diminish their capability to carry out their supervisory responsibilities." In their testimonies, both Greathouse and Ross testified that Weigand's allegations in his newsletters "went over the line," and further that he had violated instructions to keep the information "secret" during the pendency of an investigation concerning it by Respondent.

It is conceded that the most immediate cause leading up to Weigand's termination began with his publication of two newsletters. In those newsletters he made a number of statements concerning perceived misconduct by Respondent, and one of its supervisors.

Specifically, in February (at pp. 5–7) and March (at p. 14) of 1998, Weigand wrote and published in the *Sun Traveler* articles concerning incidents which had occurred back in the summer of 1996 concerning alleged sexual harassment by the supervisor of the scheduling department, Mike Crain.

The factual background for these articles is apparently not in dispute by the parties. Thus, summarizing in July of 1996, Weigand and other employees complained to Ross about conduct by Crain which they found offensive, generally involving Crain groping or rubbing himself in the area of his groin. Ross referred the matter to Greathouse. In turn, Greathouse assembled the affected employees and solicited their complaints. After doing so Greathouse told the employees that the meeting was confidential, and was not to be discussed, even among themselves. Greathouse gave no explanation for her instruction, and placed no time limit upon it. Greathouse concluded her investigation within 2 weeks, and concluded that Crain had indeed engaged in conduct which was offensive to subordinates. As a result, Crain was thereafter required to undergo counseling, which he concluded in November 1996.

However, notwithstanding the results of the investigation, neither Weigand nor the great majority of the employees who'd been interviewed about, or who had been affected by, Crain's behavior was ever informed of the outcome of the investigation, or even that it had been conducted or concluded. There is no evidence that employees were ever informed that any corrective action had been taken upon their complaint.

So, time went by.

However, during the period from April to September of 1997 an employee named Hall was assigned to the department supervised by Crain. After being in the department for some time, Hall reported to fellow employees, including Weigand, that he had concerns about Crain's behavior. The actions were characterized as "[Crain] always grabbing himself," which Hall found made him feel uncomfortable to observe or be around.

Still more time passed.

Eventually, in his articles published in the *Sun Traveler* in February and March of 1998, Weigand detailed the experiences of himself and other employees in reporting sexual harassment to Respondent in 1996, and reported that they had been instructed to not discuss the matter. He asserted that management had done nothing in response to their complaint, and that the offending supervisor—the scheduling supervisor—was continuing with the offensive behavior. Weigand accused management of covering up the behavior.

There is no dispute but that upon learning of Weigand's articles Respondent took steps to discipline him, with Ross making the ultimate decision to terminate Weigand.

Thus, on April 2, 1998, Weigand was sent a letter by Respondent stating that Weigand's articles constituted a "verbal assault" on the supervisor of scheduling, and were inflammatory, derogatory, and disparaging. The letter also recited as its basis for action that Weigand's articles constituted public disclosure of private facts, as well as character defamation. Neither in this letter, nor in the trial, has Respondent ever asserted that Weigand's factual allegations were either inaccurate or deliberately false.

Subsequently, the issue of Weigand's discipline was submitted as a grievance, which ultimately proceeded to arbitration. The arbitrator decided against Weigand. However, there is no evidence that the issue of whether or not Weigand's actions constituted union, or protected, concerted activities was either presented or decided by the arbitrator. In my review of the arbitrator's decision, it is clear that the conclusion therein rests not upon any consideration of whether or not Weigand's actions were protected, but, instead, largely upon Weigand's obvious violation, (through his writings contained in the newsletters), of the instructions which he and others were given against discussion of the matters raised in Respondent's investigation of their complaint concerning sexual harassment.

B. Analysis and Conclusions

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation.

1. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision.

2. Second, upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Corp.*, 462 U.S. 393, 399–403 (1983).

In this case I conclude that the General Counsel has made a strong case that Weigand was involved in protected activity preceding his discipline by Respondent. All the testimony shows that he repeatedly spoke in an effort to alert fellow employees of alleged misdeeds and injustices being practiced upon them by Respondent. Such speech is the common currency used to promote the cause of unionism with other employees. It cannot be argued that such conduct is unprotected.

For many years the Board has recognized, as enjoined by the Supreme Court, the great importance of employees' freedom communication to the free exercise of organizational rights. *Central Hardware*, 407 U.S. 539, 542–543 (1972).

The Board finds that the right of employees to organize for collective bargaining is a strong Section 7 right, "at the very core of the purpose for which the NLRA was enacted." *New Process Co.*, 290 NLRB 704, 705 (1988). In any litany of the ways in which employees organize themselves for collective bargaining, their day-to-day discussions and interchange of ideas must surely rank very high. For this reason it is regarded as protected activity. Thus, Weigand's efforts to communicate with, and convince others of the validity of his ideas and feelings about the cause of unionism, and the injustices of their employer, must generally be regarded as protected as well.

Further, as pointed out by counsel for the General Counsel, this right to freedom of communication is not limited to organizational rights, "for nonorganizational protected activities are entitled to the same protection and privileges as organizational activities." *Container Corp.*, 244 NLRB 318, 322 (1979).

Of paramount importance in this matter, the sort of communication which takes place when articles are published in union newsletters has long been found to be protected, concerted activity. *Postal Service*, 241 NLRB 389 (1979).

Here my examination of the articles written by Weigand demonstrates them to have been no more than efforts by him to

arouse consciousness and indignation among his fellow employees concerning perceived injustice by their employer, i.e., the apparent failure of management to take action for many, many months concerning employee complaints that sexual harassment had occurred.

Thus, where, as here, an employer disciplines an employee for his utterances in such a publication, the employer acts at its own peril.

As a consequence, I turn to an examination of the defenses offered by Respondent in order to determine whether or not it has met its burden under *Wright Line*.

First, the assertion by Respondent that Weigand's commentary amounted to a verbal assault upon his supervisor, Crain, seems to rest upon Respondent's view that such commentary somehow lessened Crain's ability to supervise, and needlessly identified him as the object of a complaint concerning sexual harassment. I note, however, that when repeatedly invited at trial to define this offense, Respondent's officials simply could not do so. In other words, it was clear that this alleged offense by Weigand is so nebulous, so ambiguous, that it can be said to exist only in the eye of the beholder. That, of course, is no standard at all. Certainly, it is insufficient to overcome the prima facie case established by counsel for the General Counsel.

Second, Weigand is accused by Respondent of having gone "over the line." However, I cannot agree that Weigand's choice of words was so extreme as to deprive him of the Act's protections. As the Board has held, the use of rhetorical hyperbole to emphasize disapproval of management does not remove such writings from the Act's protections. *Postal Service,* supra. My examination of Weigand's writings fails to show how it even comes close to exceeding the standard of the Supreme Court, which holds that even the most repulsive speech enjoys immunity provided it falls short of deliberate or reckless untruth. *Linn v. Plant Guards Local 114*, 383 U.S. 53, 63 (1966). The views of workers and the union need not be expressed with any excessive regard for the niceties of courtesy, or in the politest of terms. It is recognized that Federal law gives license in the collective-bargaining arena to use intemperate, abusive, or insulting language without fear of restraint or penalty if the speaker believes such rhetoric to be an effective means to make a point. *Letter Carriers Branch 69 v. Austin*, 418 U.S. 264, 283 (1974). Clearly, Weigand's writings did not exceed the limit.

As the Board has noted, the issue to be addressed is the question of whether or not the comments are related to concerted or union interests, and once the concerted nature of the words is established, the respondent has the burden to show that the words were published with knowledge of their falsity or with reckless disregard of whether they were true or false. *Springfield Library & Museum Assn.*, 238 NLRB 1673 (1979).

In a case such as this, where it is undisputed that Respondent had utterly failed to let employees know what the outcome was of their complaint concerning sexual harassment, and such failure had gone on for over a year and a half, and new, similar complaints concerning the same supervisor had been voiced to Weigand by a new employee, it seems beyond argument to me that Weigand not only had no reason to believe that the words which he wrote were untrue, but also had well founded reason to believe them to be both accurate and true. Thus, it seems abundantly clear to me that his writings in the *Sun Traveler*, for which he was fired, never exceeded the Board's permissible limits, or lost their protections under the Act. Accordingly, I find and conclude that any defense by Respondent that Weigand had crossed some ambiguous line is simply false, and serves as no defense to the General Counsel's prima facie case.

Regarding the issue of "confidentiality," it must be conceded that employers often do have valid interests in the preservation of confidential materials. Thus, the Board has ruled that employers may validly instruct their employees to refrain from discussions concerning a myriad of matters. However, that is not to say that all such instructions are lawful. For example, an employer may not validly prohibit employees from soliciting one another to engage in union or protected, concerted activities under all circumstances and in all locations. For another example, an employer may not prohibit employees from disclosing certain types of information, such as their wage rates, to one another. Employees have a right protected by the Act to discuss among themselves their sexual harassment complaints. *All American Gourmet*, 292 NLRB 1111 (1989). Thus, where, as here, whatever information (even assuming that it was validly "confidential"), Weigand may have disclosed in violation of instructions given by Respondent, coming as it did over a year and a half after employees had languished in ignorance concerning the outcome of their protected activity in protesting their supervisor's actions, I must find, as I do, that Respondent's rule must give way to the rights of employees to concertedly seek and obtain redress for their grievances. It was simply too broadly interpreted and applied. And, to the extent that it was applied in such a way as to punish Weigand for communicating with his fellow employees concerning their grievances, it violated Section 8(a)(1) and (3) of the Act. Accordingly, I find and conclude that Respondent's "confidentiality defense" is insufficient to overcome the General Counsel's *prima facie* case.

Respondent's final defense concerns the fact that Weigand's writings made it obvious that Crain was the alleged offender. That, of course, is regrettable. One can easily empathize with the sensibilities of anyone accused of any sort of sexual misconduct. Nevertheless, I know of no rule prohibiting such disclosures, especially where the disclosures are true. Thus, I find them to have been no defense to the General Counsel's prima facie case.

In summary, I find and conclude that counsel for the General Counsel has made a strong prima facie case in each respect alleged, and that Respondent's defenses are insufficient to overcome any aspect of it.

In conclusion, I must reject Respondent's argument that I should defer to the arbitrator's award concerning Weigand's discipline and discharge. As shown above, the arbitrator's award fails to consider or decide whether or not workers have a right protected by the Act to complain to their employer concerning perceived sexual harassment, or whether or not discussions between employees concerning such complaints, and their redress, are protected by the Act. Specifically, the arbitrator made no finding as to whether or not Weigand had a right to write and publish information in order to enlighten fellow em-

ployees concerning such complaints. Accordingly, I find and conclude that the arbitrator's award fails to meet the standards for deferral announced in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

CONCLUSIONS OF LAW

1. Respondent, Phoenix Transit System, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Amalgamated Transit Union, Local Union No. 1433, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (3) of the Act by promulgating and enforcing a rule against employees discussing their wages, hours, and working conditions among themselves, and by discharging its employee, Charles Weigand, because he had engaged in protected and/or union activities.

4. The above unfair labor practices have an effect upon commerce as defined in the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that employee Charles Weigand was unlawfully discharged, Respondent is ordered to offer him immediate reinstatement to his former position, displacing if necessary any replacement, or to a substantially equivalent position, without loss of seniority and other privileges. It is further ordered that Charles Weigand be made whole for lost earnings resulting from his discharge, by payment to him of a sum of money equal to that he would have earned from the date of his suspension to the date of his return to work, less net interim earnings during that period. Backpay shall be computed in the manner prescribed by *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977).[1] Interest on any such backpay shall be computed as in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

It is further ordered that the Respondent expunge from its records any references to the discharge mentioned, and provide Charles Weigand written notice of such expunction, and inform him that the Respondent's unlawful conduct will not be used as a basis for further personnel actions against him.[2]

[Recommended Order omitted from publication.][5]

[1] See generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[2] See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).